

**MINUTES  
of the  
SIXTH MEETING  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**November 3-4, 2005  
Santa Fe**

The sixth meeting of the Water and Natural Resources Committee was called to order at 10:10 a.m. on Thursday, November 3, 2005, by Senator Carlos R. Cisneros, chair.

**PRESENT**

Sen. Carlos R. Cisneros, Chair  
Rep. Joe M Stell, Vice Chair  
Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Sen. Mary Jane M. Garcia  
Rep. Dona G. Irwin  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. Cynthia Nava  
Rep. Andy Nunez  
Sen. Mary Kay Papen  
Rep. Mimi Stewart  
Rep. Sandra L. Townsend  
Rep. Don L. Tripp

**Advisory Members**

Sen. Rod Adair (November 4)  
Rep. Anna M. Crook  
Rep. Candy Spence Ezzell  
Sen. Clinton D. Harden, Jr. (November 3)  
Sen. Gay G. Kernan  
Rep. Rhonda S. King  
Rep. Ben Lujan (November 3)  
Rep. James Roger Madalena (November 4)  
Rep. Danice Picraux  
Sen. Leonard Lee Rawson (November 3)  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Sen. Leonard Tsosie (November 4)  
Rep. Peter Wirth

**ABSENT**

Rep. Joseph Cervantes  
Sen. Dede Feldman  
Sen. Steven P. Neville  
Sen. H. Diane Snyder

Sen. Vernon D. Asbill  
Rep. Richard P. Cheney  
Sen. Timothy Z. Jennings  
Rep. Greg Payne  
Rep. Henry Kiki Saavedra  
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Gordon Meeks  
Evan Blackstone  
Jon Boller  
Jeret Fleetwood

**Guests**

The guest list is in the original meeting file.

**Thursday, November 3**

The minutes of the September 28-29, 2005 meeting were approved as submitted.

**INTERSTATE STREAM COMMISSION AND STATE ENGINEER BRIEFING**

John D'Antonio, state engineer, began by providing the committee with an overview of the Office of the State Engineer's (OSE) accomplishments over the past several years, including active water resource management (AWRM), Native American water rights settlements, progress made on regional water plans and new rules and regulations. He went on to discuss activities of the OSE on the Pecos River, explaining that 30 years of under-delivery of water under the Pecos River Compact and a subsequent lawsuit that cost New Mexico \$14 million led to a 2003 settlement agreement among water users on the river. Mr. D'Antonio explained that the OSE has been working to implement that agreement, but that it will still require another \$14 million to fully implement it.

Next, Mr. D'Antonio discussed Native American water rights settlements in New Mexico. He pointed out that the legislature passed the Indian Water Rights Settlement Fund during the 2005 session, which will help pay for the state's share of implementation of various Indian water rights settlements when the fund receives any money. Mr. D'Antonio then discussed the distribution of settlement funds and the status of several Indian water rights settlements involving New Mexico.

Finally, Mr. D'Antonio discussed the water infrastructure needs of New Mexico and the likely cost of many of those projects. He presented the committee with a table showing the critical major statewide water projects and the state's anticipated cost share to complete them. That total is \$280 million.

Questions and comments included:

- possible litigation between Texas and New Mexico concerning the lower Rio Grande;
- the use of surplus money the state currently has to generate income, such as bonds, to use for water infrastructure projects;
- the progress of adjudications and water courts;
- whether New Mexico is pursuing litigation against any other states or entities;
- rules and regulations for well-drilling;

- Ruidoso water supply issues;
- the possibility of working with the New Mexico Institute of Mining and Technology and the Bureau of Geology and Mineral Resources to conduct a ground water study;
- the fiscal agent for salt cedar removal projects;
- the potential use of condemnation to acquire water rights; and
- dam safety issues.

## **WATER SYSTEM PLANNING, PERFORMANCE AND CONSERVATION — RESPONSE TO HJM 86**

Mr. D'Antonio and Anne Watkins of the OSE provided the committee with an overview of the large number of drinking water systems in New Mexico and the risks faced by those systems, such as aging infrastructure; water supply availability; limited expansion capacity; problems complying with the federal Safe Drinking Water Act; and infrastructure funding. They explained that these drinking water system problems were identified by the legislature when it passed HJM 86 in 2005, which directed the OSE to develop water system planning, performance and conservation criteria.

Mr. D'Antonio and Ms. Watkins explained that Governor Richardson formed the Water Infrastructure Investment Team through executive order, which in turn created the Water Infrastructure Technical Team. They went on to note that the Water Infrastructure Technical Team developed the criteria for water system planning called for in HJM 86.

Mr. D'Antonio and Ms. Watkins then provided the committee with an overview of the 10 criteria developed by the Water Infrastructure Technical Team. They explained that water projects seeking state funding should be required to: have a financial plan; have fully allocated rate structures; have asset management plans; have water use accounting systems; comply with OSE regulations; comply with other state and federal regulations; have an adequate governance structure; be planning for infrastructure and operations; participate in regional collaboration; and have energy efficiency strategies. In addition to the 10 criteria, the Water Infrastructure Technical Team also provided the committee with several other recommendations, such as revising statutes; metering all water uses; packaging funding as a combination of grants and loans; and establishing a state planning entity.

Questions and comments included:

- inclusion of right-of-way easements into planning criteria;
- the application process for water infrastructure project funding;
- water rates issues;
- the extent of ground water contamination;
- how regionalization will work;
- the relationship to the New Mexico Subdivision Act;
- the effect on tribal lands and inter-jurisdictional planning and coordination;
- qualification of some Navajo systems under this policy;
- which agency approves the projects for funding;

- the uniform financing application;
- metering all users and who monitors the meters;
- threats to completion of projects that have already begun; and
- the applicability to direct appropriations.

## **WATER SYSTEM GOVERNANCE AND FUNDING**

Susan Kelly, associate director of the Utton Center at the University of New Mexico (UNM), and Judy Flynn-O'Brien, interim director of the Institute for Public Law at UNM, provided the committee with an overview of a project they are currently undertaking that reviews and compares the statutes involving water and wastewater systems in New Mexico. They explained that identifying and comparing the sometimes wildly different statutes for water and wastewater systems would help decision-makers better understand both the problems faced in trying to authorize and fund such systems, as well as provide some notion of the statutory tools available for system planning, management and funding.

Ms. Kelly and Ms. Flynn-O'Brien began by noting that the OSE had contacted the Utton Center about such a project, and that the project had been done in conjunction with the UNM Center for Public Law, the OSE, the New Mexico Department of Environment (NMED) and a number of other entities. They also explained that a list of statutes, including the laws under which various water systems are organized and managed, was developed. Ms. Kelly and Ms. Flynn-O'Brien went on to note that the final result of the project is a series of charts listing the different statutes under which water systems are organized. They provided the committee with several of these charts.

Finally, Ms. Kelly and Ms. Flynn-O'Brien noted that several trends became apparent as the project progressed. They provided the committee with a list of issues that the project management team thought were not well-defined within the statutes, such as defined service areas for water systems, financial management of systems and regulatory oversight.

Questions and comments included:

- proposed legislation;
- gated communities;
- imminent domain authority;
- federal water systems;
- Pojoaque Valley joint powers for inter-jurisdictional water authorities;
- acequias; and
- public-private partnerships for water systems and the statutory authority for them.

## **NMED — COOPERATIVE EXTENSION SERVICE COLLABORATIVE — RESPONSE TO HM 66**

Ron Curry, secretary of environment, and Paul Gutierrez, Cooperative Extension Service, summarized the response of the department and the service to House Memorial 66. The memorial requested better coordination between the organizations to protect the environment and

improve communication and outreach in rural New Mexico. The Cooperative Extension Service is distributing information pamphlets on septic tanks and rules governing septic tank installation. NMSU and the Cooperative Extension Service will probably house a wastewater treatment training center and cooperate in developing the curriculum. There are also plans to cooperate on the statewide climate change group. Shared educational and training opportunities will be pursued by placing information brochures from the organizations in their respective field offices. Special attention will be paid to information outreach concerning the federal Clean Water Act and NMED's enforcement of the state Water Quality Control Act.

Questions and comments included:

- legislation for next session;
- the applicability of rules on liquid waste systems;
- rules for accommodating low-income wastewater system owners;
- new technologies for improving septic systems;
- outreach for confined animal feeding operations; and
- the climate change group's appreciation of NMSU President Martin's role.

#### **Friday, November 4**

#### **LEGISLATIVE REQUESTS**

The committee discussed and endorsed the following measures for introduction in the next legislative session:

1. an appropriation for small agricultural producers;
2. the produced water tax credit;
3. Sanitary Projects Act changes;
4. boating safety education requirement;
5. capital outlay for Cabresto Lake dam stabilization and improvement;
6. the state engineer's administrative hearings process;
7. capital outlay for the El Valle de los Ranchos Water and Sanitation District;
8. an appropriation for cloud seeding;
9. an appropriation for the Water Trust Fund;
10. an appropriation for the state engineer's water adjudication expenses;
11. an appropriation for the state engineer's water masters to enforce senior water rights;
12. an appropriation for major statewide priority water infrastructure projects;
13. an amendment to the 40-year water planning statute to add public schools; and
14. an appropriation for a salt cedar removal program.

#### **ACEQUIA ISSUES**

Paula Garcia of the New Mexico Acequia Association and Arthur Chavez of the Taos Acequia Association provided the committee with an update on the status of acequia issues in New Mexico. They explained that acequias are under pressure and vulnerable as a result of their

dependence on volunteers for work and their location in primarily rural areas of the state. Ms. Garcia indicated that areas near acequia systems that find themselves in need of water often turn to acequias to fulfill their water needs. She went on to note that strengthening acequia governance would help make the acequias and their users less vulnerable to outside pressure.

Ms. Garcia then provided the committee with two legislative proposals. The first proposal involves tort liability for acequia volunteers. She explained that while acequias themselves are immune to tort claims, volunteers who work on acequias are not. Ms. Garcia indicated that individuals have been sued recently for actions they performed while volunteering for work on acequias and pointed out that such lawsuits discourage participation in acequia activities. She asked the committee to consider endorsing legislation that clarifies tort liability and acequias. The second proposal Ms. Garcia brought before the committee was a memorial regarding youth involvement with acequias.

Finally, Ms. Garcia discussed a number of other areas of concern to the New Mexico Acequia Association, including AWRM rule promulgation by the OSE; water masters assigned by the OSE; stock pond regulation; and the possibility of dedicating a subcommittee of the Water and Natural Resources Committee to acequia issues. The committee referred the acequia tort claims liability bill to the interim Courts, Corrections and Justice Committee.

### **STATE MINE INSPECTION**

Rebecca Boam, director of the Bureau of Mine Safety, provided the committee with an overview of the various changes to the statutes regarding the mine inspections that the Mine Safety Advisory Board intends to seek in the upcoming legislative session. She explained that the board had examined the statutory duties of the state mine inspector recently and determined that they were not aligned with current practices. Ms. Boam went on to indicate that a fair amount of duplication of effort exists between state and federal entities, particularly with regard to enforcement of safety regulations at deficient mine sites. She noted that the state mine inspector currently plays more of an educational role, rather than enforcing safety regulations, for which she said federal inspectors are primarily responsible. Ms. Boam pointed out that even if the statutes were changed to keep enforcement with federal authorities, the state mine inspector would still visit mine sites regularly.

Finally, Ms. Boam provided the committee with a list of other potential changes to statutes regarding mine safety. For example, she noted that a clearer process for mines appealing decisions against them would be helpful. Ms. Boam also suggested repealing any outdated mine safety statutes.

On a motion made, seconded and unanimously approved, the committee endorsed the proposed changes to state statutes regarding mine safety.

Questions and comments included:

- whether or not there would be an executive message from the governor making the

- suggested bills germane to the 30-day session;
- miner training and certification;
  - the annual Bureau of Mine Safety budget; and
  - certification of coal miners.

There being no further business, the committee adjourned at 1:30 p.m.